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SUBJECT: ASSEMBLY FAILS TO ELECT SUPREME COURT JUSTICES

¶1. Summary: The Salvadoran Legislative Assembly failed to elect Supreme Court Justices by the June 30 deadline mandated by law. Every three years, the Legislative Assembly is required to elect (or re-elect) five of the 15 Supreme Court justices and some alternate justices. While the full implications of the Assembly's failure to act are unclear, the impasse could lead to an institutional crisis and bring the Salvadoran judicial system to a standstill. End Summary.

¶2. Every three years, the Legislative Assembly must elect (or re-elect) five of the 15 justices of the Supreme Court from a list of 30 names provided by the National Judiciary Council (CNJ) and the National Association of Lawyers. A total of nine names must be selected from the list: four justices for the Constitutional Chamber of the Court, one justice for the Civil Chamber, and four alternates. The justices must be elected by a two-thirds majority, thus requiring the two major parties, (conservative) ARENA and the (ruling, left-wing) FMLN, to be in agreement.

¶3. On May 13, a challenge was filed with the Constitutional Chamber of the Supreme Court contesting three of the names submitted by the CNJ. The complaint alleged that three of the names, David Gonzolo Cabezas, Efrain Campos, and Nora Montoya, were unethical, since those individuals were members of the CNJ and their "self-nominations" violated the spirit, if not the letter, of the law. The Court asked the Legislative Assembly to stop the election until it could consider the complaint. On June 30, those individuals withdrew their names from consideration. However, the election deadline has passed, so there is currently no judicial authority in place to lift the injunction and legally resume the election.

¶4. The Legislative Assembly was scheduled to vote at 4 PM on June 30; however, party leaders continued to negotiate several hours beyond this scheduled vote. Despite the delays, FMLN deputies told us that they were optimistic and confident that the election would occur before midnight. Once it became clear that negotiations were deadlocked, FMLN deputies were worried, but calm.

¶5. Through the course of the evening of June 30, most Assembly deputies waited in their offices, eager to meet the deadline. As the impasse became clear, the deputies moved to repeal a law that would have automatically renewed the mandates of the incumbent judges for an additional nine years. Clearly, the Assembly deputies preferred to leave the seats vacant, rather than have the seats filled by the incumbents. (Note: The Constitution does not offer legal avenues to temporarily extend the incumbents, mandates for a period of time shorter than nine years.)

MOVING FORWARD

¶6. A possible course of action has emerged in response to

the crisis. First, vacancies in the Supreme Court will likely be temporarily filled by judges from the three other chambers. Those judges will have to lift the injunction issued by the Supreme Court that has prevented the Assembly from voting on justices. After that, the election of the justices by the Assembly can legally resume. There is no new formal deadline for a resolution.

17. Comment: Even though the Supreme Court impasse is potentially problematic, it appears to have done little more than generate confusion thus far. However, that could change if this situation drags on for more than a week or two, as the centralized and top-heavy Salvadoran judicial system will slowly grind to a halt. While conspiracy theories abound as to ARENA's and the FMLN's ulterior motives in failing to appoint magistrates to the Court on time, the truth seems to be that the CNJ's initial move to nominate its own officers has led to a Keystone Cops-style comedy of errors and missteps resulting in the current impasse. Whatever the cause, it is risky for El Salvador to be without a functioning Supreme Court and we will continue to urge Assembly Deputies to resolve this impasse. A similar impasse has prevented the naming of a new Attorney General, although in that case the acting AG has been able to serve in a caretaker capacity. End Comment.
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